IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 18888 of 2007(W)

OS.112/2005 OF III ADDL.SUB COURT, KOZHIKODE
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PETITIONER:

SANTHAKUMARI, W/O. LATE MATHARDIKKEL RAVINDRAN, 'SANTHI', BEYPORE AMSOM DESOM, KOZHIKODE.

BY ADV. SRI.GOVIND K.BHARATHAN
SRI.PRABIN BABU

RESPONDENTS:
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1. V.BALAKRISHNAN, S/O. CHOYIKKUTTY KURUPPU, 6/60 A, SUGUNAPURAM, KUMBATHOOR, COIMBATORE, TAMIL NADU.

2. V.P.PRAKASAN, S/O. APPU, SAKTHI FOOD ENTERPRISES, MARAD BEACH ROAD, THAMBURAN ROAD, BEYPORE AMSOM DESOM, KOZHIKODE.

3. VARIYATH PREMA, D/O. APPUTTY, VARIYATH HOUSE, NADUVATTOM, BEYPORE, KOZHIKODE.

BY ADV. SRI.T.SETHUMADHAVAN --- R2
SRI.PUSHPARAJAN KODOTH
SRI.C.P.MOHAMMED NIAS --- R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 18888/2007

APPENDIX

PETITIONER'S EXHIBITS,

EXT.P1. COPY OF THE ORDER DT. 2/1/2007 IN OS NO. 112/2005 OF THE SUB COURT, KOZHIKODE.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 18888 OF 2007

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Dated this the 26th day of September, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P1 order passed by the Sub Judge, Kozhikode on issue Nos.5 and 6. From the extracted portion in the writ petition in page 5, the question that was considered by the Court was whether there was need to set aside the two impugned documents and whether the Court fee has to be paid in such a case under Section 40 of the Kerala Court Fee and Suit Valuation Act. The Court below on a consideration of the materials held that the document is voidable and therefore it has to be set aside.

2. The learned counsel for the writ petitioner persist that the documents are void ab initio and it need not be set aside. If it is a voidable document, in the light of the

pronouncement of the Apex Court as well as of this Court, it has to be set aside and if a document is void then it is non-existent and therefore there need not be any prayer to set aside that document. The Court below has taken the view that the document is voidable. So many factors may also be necessary to find out whether a document is void or voidable. From a mere reading of the document one cannot come to a conclusion that it is a void document or voidable document. So it is a matter which requires consideration and before reaching that stage it may not be possible for any Court to hold that it is a voidable document and therefore it has to be set aside. So, since the plaintiff is of the consistent stand that the document is void, he has to take the risk if ultimately it goes the other way. Therefore, untramelled by the observations made in the order which is passed by the learned Subordinate Judge, he is directed to consider the entire case and if ultimately if he holds the view that it is a void document or a voidable document, the necessary consequences as per law will have to follow. I leave the

matter there and therefore set aside the order impugned at this stage and direct the Court below to proceed further in the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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